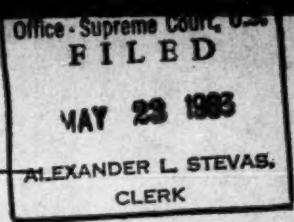


82 - 2132

CASE NUMBER



SUPREME COURT OF THE UNITED STATES

1983

WARREN K. LEWELLEN, et al

Appellants

VS

COMMISSIONER OF INTERNAL REVENUE

Appellee

On Appeal from the United States
Court of Appeals for the First Circuit

JURISDICTIONAL STATEMENT

Warren K. Lewellen, pro se
Paula K. Lewellen, pro se
145 Davis Road
Bedford, Massachusetts

01730

(617) 275-7784

(b) Warren K. and Paula K. Lewellen, pro se
appellant; Commissioner of Internal
Revenue, appellee

(c) Table of Contents

(d) Reference to reports from below

(I) Memorandum of authorities

by IRS, Boston app. page

(II) Tax Court memorandum app. page

(III) Appeal Court "Per

Curiam" decision app. page

(e) Grounds for Jurisdiction

(I) Section 7482 of the Internal

Revenue Code of 1954

(II) Appeal Court for the First

Circuit Judgement February

23, 1983 app. page

(III) Title 28 Section 1254 of

the United States Code

(f) Constitutional Provision Amendment IV
to the Constitution

"The Right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated."

We consider the errors and omissions by IRS to be an unreasonable seizure of taxes on nearly \$200,000.00 of alleged income.

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(a). Issues Presented

1. Whether late filing of IRS Notices of Deficiency for the years 1970 and 1971 precludes their further consideration.
2. Whether the losses on beef cattle operations may be deducted from farm losses as found by the Tax Court.
3. Whether the income from the rental of space in farm buildings is reportable as farm income.
4. Whether certain costs of local real estate taxes and mortgage interest may be transferred from farm expenses to cost of land sold.
5. Whether certain errors by the Lewellens in the allocation of labor costs may be corrected by

deleting them from farm losses and adding them to cost of land sold.

6. Whether an error by the Lewellens in reporting income of \$2,842.20 in 1970 when it had already been reported in 1969 may be corrected.
7. Whether certain errors in the claims by IRS of unreported income may be corrected.
8. Whether certain amounts of income from sales of land ordered held in escrow by the Middlesex Superior Court and awarded to the complainant may be deleted.
9. Whether the amounts paid to the Federal Land Bank prior to their foreclosure may be added to the cost of land sold.

(g) Statement of the Case

The primary purpose of this appeal is not to challenge the findings of the Tax Court and the Appeal Court with regard to the inacceptability of our farm losses and the non-applicability of capital gains treatment of our land sales, rather it is for the purpose of establishing the amount of additional taxable income after all the errors of omission and commission have been corrected.

We note that although the Appeal Court hints that had it been the Court of first impressions it might have different findings from the Tax Court. We have given up on farm losses and capital gains because those two questions seem to have overwhelmed consideration of other questions such as

determination and correction of errors in IRS claims.

When one adds the capital gains income on land sales reported in the six 1040D (\$46,556.59) to the increases in taxable income claimed by IRS on land sales (\$90,753.77) to get a total of \$137,310.36 and then it is discovered that the total gain from the sales of land was only \$93,113.75 it becomes pretty obvious that something is wrong. We don't believe that it is the intention of Congress for IRS to take 100% of the gains from the sales of our land plus 47% more (\$44,196.61) for some unexplained, unjustified reasons. Furthermore, IRS seems to have trouble with simple arithmetics in arriving at farm income where errors totaling 18% are included in both IRS and Tax

Court findings.

- (h) Statement of the Reasons why the questions presented are substantial.

This case is against a small family farm owned by ailing elderly parents with a semi-invalid son as manager-operator. On the basis of the Tax Court decision IRS placed a lien of \$75,000.00 on the farm and have collected over \$10,000.00 in bank accounts. If the answers to paragraph (a) above are favorable to the Lewellan there will be no problem of paying additional taxes, if the answers are unfavorable and IRS proceeds with a foreclosure it is very likely the farm will be lost.

The exorbitant claims by IRS are based largely upon the disallowance of farm losses and the unacceptability of

capital gains treatment of the income from sales of land along with associated errors of commission and omission. The details will be included in the brief. The summations of the IRS claims and the results of eliminating their errors are set forth below under "IRS Claims" and "WKL Claims".

<u>Year</u>	<u>IRS Claims</u>	<u>WKL Claims</u>	<u>Difference</u>
1970	\$41,769.42	(\$5,166.87)	\$46,936.29
1971	42,516.94	1,165.00	41,351.94
1972	41,383.51	(3,958.92)	45,342.43
1973	22,065.70	(4,637.55)	26,703.20
1974	26,041.71	2,834.54	23,207.17
1975	8,531.32	(958.99)	9,490.31
	<hr/>	<hr/>	<hr/>
TOTAL	\$182,208.60	(\$10,722.79)	\$193,031.34
1970-			
1975			

Warren K. Lewellen
Warren K. Lewellen, pro se

Paula K. Lewellen
Paula K. Lewellen, pro se

145 Davis Road
Bedford, Massachusetts 01730
(617) 275-7744